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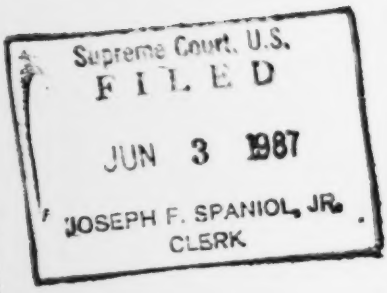

No. _____

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1986

ZELMA E. HAYES, PETITIONER

v.

JOYCE M. DIXON, ET AL., RESPONDENTS.

PETITION FOR WRIT OF CERTIORARI TO THE
NORTH CAROLINA COURT OF APPEALS

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QUESTION PRESENTED

Whether the North Carolina statutory scheme governing intestate succession, barring an illegitimate child from inheriting her biological father's estate absent a formal legitimization during the father's lifetime, denies the child the equal protection of the law under the Fourteenth Amendment, where:

1. The biological father is identified as the illegitimate child's father on the child's birth certificate;

2. All other heirs and relatives concede that the decedent was in fact the biological father of the illegitimate child; and

3. The father-daughter relationship was frequently and publicly acknowledged during the father's life, including in a

"Designation of Beneficiary" form on which the decedent named the petitioner sole beneficiary of a life insurance policy and indicated that the petitioner was his daughter.

LIST OF PARTIES

The parties to the proceeding below are the petitioner Zelma E. Hayes and the respondents Joyce M. Dixon, administratrix of the Estate of Kyrl Houston Jeffries, Novella J. Martin, Samuel Jeffries, and Joyce M. Dixon, administratrix of the Estate of Myrtle Jeffries.

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No. _____

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1986

ZELMA E. HAYES, PETITIONER

V.

JOYCE M. DIXON, ET AL., RESPONDENTS.

PETITION FOR WRIT OF CERTIORARI TO THE NORTH CAROLINA COURT OF APPEALS

The petitioner Zelma E. Hayes respectfully prays that a writ of certiorari issue to review the judgment and opinion of the North Carolina Court of Appeals entered in the above-titled proceeding on October 27, 1986.

OPINION BELOW

The opinion of the North Carolina Court of Appeals is reported at 83 N.C. App. 52, 348 S.E. 2d 609 and is reprinted in the appendix hereto, p. 1a, infra.

The order of the North Carolina Supreme Court dismissing petitioner's appeal and denying her petition for discretionary review is reported at ___ NC __, 353 S.E. 2d 402 and is reprinted in the appendix hereto, p.8A, infra.

JURISDICTION

Claiming that application of N.C. Gen. Stat. 29-19 to prevent petitioner from inheriting her biological father's intestate estate violated the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, the petitioner brought this action for declaratory judgment in the

Superior Court of Guilford County, State of North Carolina. On October 1, 1985 the Superior Court of Guilford County granted respondents' motion for summary judgment.

On petitioner's appeal, the North Carolina Court of Appeals, on October 7, 1986, affirmed the Superior Court of Guilford County's judgment.

The petitioner then filed an appeal and, in the alternative, a petition for discretionary review to the North Carolina Supreme Court. On February 3, 1987 the North Carolina Supreme Court dismissed the appeal and denied the petition for discretionary review.

On April 21, 1987, Chief Justice Rehnquist ordered that the time for filing this petition for writ of certiorari be extended to and including June 3, 1987.

The jurisdiction of this Court to

review the judgment of the North Carolina Court of Appeals is invoked under 28 U.S.C. 1257 (3).

CONSTITUTIONAL PROVISION AND STATUTE INVOLVED

United States Constitution,
Fourteenth Amendment

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of the law; nor deny to any person within its jurisdiction the equal protection of the laws."

N.C. Gen. Stat. 29-19. Succession by, through and from illegitimate children.

(a) For purposes of intestate succes-

sion, an illegitimate child shall be treated as if he were the legitimate child of his mother, so that he and his lineal descendants are entitled to take by, though and from his mother and his other maternal kindred, both descendants and collaterals, and they are entitled to take it from him.

(b) For purposes of intestate succession, an illegitimate child shall be entitled to take by, though and from:

(1) Any person who has been finally adjudged to be the father of such child pursuant to the provisions of G.S. 49-1 through 49-9 or the provisions of G.S. 49-14 through 49-16;

(2) Any person who has acknowledged himself during his own lifetime and the child's lifetime to be the father of such child in a written instrument executed or acknowledged before a certifying officer named in G.S. 52-10(b) and filed during his own lifetime and the child's lifetime in the office of clerk of superior court of the county where either he or the child resides.

Notwithstanding the above provisions, no person shall be entitled to take hereunder unless he has given written notice of the basis of his claim to the personal representative of the putative father within six months after the date of the first publication or posting of the general notice to creditors.

(c) Any person described under subdivision (b)(1) or (2) above and his lineal and collateral kin shall be entitled to inherit by, through and from the illegitimate child.

(d) Any person who acknowledges him-

self to be the father of an illegitimate child in his duly probated last will shall be deemed to have intended that such child be treated as expressly provided for in said will or, in the absence of any express provision, the same as a legitimate child.

STATEMENT OF THE CASE

This case arises from summary judgment entered against the petitioner, Zelma E. Hayes, in her action seeking to be declared sole heir, as only child, of Kyrl Houston Jeffries.

The petitioner, Zelma E. Hayes, named Zelma Eliza Jeffries at birth, was born March 19, 1932 in Alamance County, North Carolina. The petitioner's birth certificate identifies Eliza Ann Jeffries as the child's mother and Kyrl Jeffries as the child's father. Eliza Ann Jeffries and Kyrl Jeffries were never married.

Eliza Ann Jeffries died three days

after giving birth to the petitioner. The petitioner grew up in Alamance County, reared by a maternal aunt.

Kyrl Houston Jeffries openly acknowledged the petitioner as his daughter and treated her accordingly. (R. at 53-54) Despite great distances which separated the two for most of Kyrl Jeffries' life -- Mr. Jeffries moved to Maryland when the petitioner was still a child and the petitioner moved to New Jersey and then to New York before Mr. Jeffries returned to North Carolina -- Kyrl Jeffries and petitioner maintained a father-daughter relationship. (R. at 53-54).

Mr. Jeffries and the petitioner visited regularly and exchanged cards and correspondence as well as telephone calls. To illustrate this relationship, the petitioner attached to her affidavit in oppo-

sition to respondents' motion for summary judgment a birthday card, designed for daughters and signed "Dad," which she received from Kyrl Jeffries.

Over the course of many years and on numerous occasions Kyrl Jeffries gave the petitioner gifts and money. In addition, Kyrl Jeffries took steps to ensure that the petitioner would be provided for upon his death. Between March, 1958 and December, 1976, Mr. Jeffries purchased 202 United States Savings Bonds, each payable to Zelma E. Hayes, with face value totalling $6,750.00. These bonds were delivered to the petitioner after Kyrl Jeffries' death. In 1976 Kyrl Jeffries signed a "Designation of Beneficiary" form, witnessed by two federal employees, naming the petitioner sole beneficiary of proceeds from a federal employees' group life

insurance policy. On the form Kyrl Jeffries expressly indicated that the petitioner was his daughter.

The father-daughter relationship between petitioner and Kyrl Houston Jeffries extended to the petitioner's family as well. Kyrl H. Jeffries treated the petitioner's children as his grandchildren. (R. 53, 97-98)

The petitioner contends that prior to the present controversy Mr. Jeffries' extended family, including the respondents, recognized petitioner and her children as intimate family members. (R. 54, 98) A local newspaper published an obituary listing petitioner as the surviving daughter of Kyrl Houston Jeffries. This obituary was evidently based on information supplied by respondent Joyce M. Dixon, administratrix of Kyrl Houston Jeffries'

estate and daughter of Myrtle Jeffries, one of Kyrl Jeffries' sisters. Similarly, the program prepared for Kyrl Jeffries' funeral service, written in part by respondent Joyce M. Dixon, referred to Zelma E. Hayes as Mr. Jeffries' daughter.

Kyrl Houston Jeffries died intestate on October 5, 1984 in Guilford County, North Carolina. His death certificate lists Zelma Hayes as his daughter.

On October 11, 1984, Joyce M. Dixon applied for letters of administration in the estate of Kyrl H. Jeffries, listing Kyrl H. Jeffries' two sisters, Novella J. Martin and Myrtle Jeffries, and his brother, Samuel Jeffries, as the only persons entitled to share in the estate.

On April 4, 1985 the petitioner brought this action seeking declaratory judgment establishing petitioner sole heir

of Kyrl Houston Jeffries' estate. The complaint alleged four grounds for relief: (1) N.C. Gen. Stat. 29-19, the statute entitling illegitimate children to inherit intestate from their father's estate, had been met; (2) under the doctrine of constructive compliance, the petitioner should be recognized as petitioner's heir; (3) the petitioner had been legitimated under New York law and should thus be recognized as legitimate in North Carolina, pursuant to N.C. Gen. Stat. 29-18; and, (4) construction of N.C. Gen. Stat. 29-19 so as to bar petitioner from inheriting from her father's estate would violate the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution as well as Article I, Section 19 of the North Carolina Constitution.

In her fourth claim for relief peti-

tioner alleged as follows:

> "The requirements imposed by North Carolina General Statute section 29-19, if construed so as to exclude the Plaintiff from receiving the Decedent's entire net estate, discriminate against her in violation of the Equal Protection Clause of Article I, Section 19 of the North Carolina Constitution and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

Respondents admitted in their answer that petitioner is the biological daughter of Kyrl Houston Jeffries, but contended that because petitioner had not been legitimated according to N.C. Gen. Stat. 29-19 she could not inherit. In a subsequent answer to petitioner's interrogatories, respondents indicated that they relied on Mitchell v. Freuler, et al., 254 S.E. 2d, 306 N.C. 557 (1979) (rejecting equal protection challenge to N.C. intestacy statutes) in denying petitioner's claim that applying N.C. Gen. Stat. 29-19

to deny petitioner her inheritance rights violated equal protection.

On October 1, 1985 the Superior Court of Guilford County entered an order granting respondents' motion for summary judgment.

On October 7, 1986 the N.C. Court of Appeals affirmed the order granting respondents' motion for summary judgment. The N.C. Court of Appeals construed N.C. Gen. Stat. 29-19 narrowly and found no compliance, constructive or otherwise. The N.C. Court of Appeals rejected summarily petitioner's equal protection claims.

The petitioner then filed an appeal, and, in the alternative, a petition for discretionary review in the N.C. Supreme Court. In her Notice of Appeal petitioner contended that the judgement below had denied her "the equal protection of the

laws ... in violation of the Fourteenth Amendment to the United States Constitution ...." (Notice of Appeal at 1.) The petitioner contended that such denial presented "substantial questions arising under ... provisions of the Constitutions of the United States and the State of North Carolina providing that no person may be deprived of equal protection of the laws." (Notice of Appeal at 1.) The petitioner argued in her Petition for Discretionary Review that N.C. Gen. Stat. 29-19(b)(2), as applied to the petitioner, violated the Equal Protection Clause of both state and federal constitutions. (Petition for Discretionary Review at 5.) The petitioner further contended that this Court's decision in Lalli v. Lalli, 439 U.S. 259, 273-74 (1978), required that the North Carolina courts interprete N.C. Gen.

Stat. 29-19(b)(2) liberally, in light of its remedial purpose, which the lower courts had not done. (Petition for Discretionary Review at 5.)

On February 3, 1987, the North Carolina Supreme Court dismissed the appeal and denied the petition for discretionary review.

REASONS FOR GRANTING THE WRIT

This Court's decision in Lalli v. Lalli is inconsistent with fundamental principles of equal protection, tolerates undue hardship and injustice, and should be overruled.

The harsh result result reached in the decision below illustrates graphically that this Court's decision in Lalli v. Lalli, 439 U.S. 259 (1979), inadequately protects illegitimate children from undue

hardship and injustice based on the circumstances of their birth. Clearly, states have legitimate interests in addressing the "problems of proof peculiar to establishing paternity, as opposed to maternity." Id. at 263. Nevertheless, fundamental principles of equal protection prohibit expansive exclusion of illegitimate children from partcipation in their father's intestate estate solely because of a blind insistence on statutory formalities forbidding "forms of proof which do not compromise the States' interests." Trimble v. Gordon, 430 U.S. 762, 772 n. 14 (1977) quoted in Lalli, 439 U.S. at 279 (Brennan, J., dissenting).

Statutory classifications based on illegitimacy reflect society's stern disapproval of sexual irresponsibilty. See Weber v. Aetna Casualty & Surety Co., 406

U.S. 164, 175 (1972). As Justice Powell stated in Weber, however, "visiting this condemnation on the head of an infant is illogical and unjust. Moreover, imposing disabilities on the illegitimate child is contrary to the basic concept of our system that legal burdens should bear some relationship to individual responsibility or wrongdoing." Id.

Under North Carolina law, illegitimate children may not inherit intestate from their father's estate unless there has been a formal adjudication or acknowledgement of paternity during the father's lifetime. N.C. Gen. Stat. 29-19(b). A number of state courts have relied upon Lalli in approving requirements that paternity be established during the father's lifetime. E.g., Mitchell v. Freuler, 297 N.C. 206, 254 S.E.2d 762 (1979); Abrams v.

Wheeler, 468 So.2d 126 (Ala. 1985); White v. Randolph, 59 Ohio St. 2d 6, 391 N.E.2d 333 (1979). As the decision below indicates, the North Carolina statute's uncompromising commands apply even to circumstances not implicating the State's legitimate objectives. The petitioner's right to equal protection of the laws overshadows the State of North Carolina's interest in insisting upon statutory formalities which exclude clear and convincing proof of paternity.

This Court first considered the extent to which the Equal Protection Clause limits the power of States to discriminate against illegitimate children in the distribution of their father's intestate estates in Labine v. Vincent, 401 U.S. 533 (1971). In Labine, 401 U.S. at 534-35, the Court rejected an equal protection chal-

lenge to a Louisiana statute allowing an acknowledged child to inherit from his/her father's intestate estate only to prevent escheat.

In Trimble, 430 U.S. at 767 n.12, the Court recognized that its decision in Labine departed from a consistent line of cases prohibiting undue discrimination against illegitimate children and noted that subsequent decisions had cast doubt on Labine's validity. The Court then held that an Illinois intestacy statute requiring both intermarriage of the child's parents and paternal acknowledgement before an illegitimate child could inherit from his/her father's estate violated the Equal Protection Clause. Trimble, 430 U.S. at 764-66. The Court focused on whether the statute was "carefully tuned to alternative considerations," id at 772 quoting

Matthews v. Lucas, 427 U.S. 495, 513 (1976), and concluded that the statute failed to provide adequate alternative means of establishing paternity. Trimble, 430 U.S. at 772-73. To illustrate the statute's overbreadth, the Court pointed out that an adjudication of paternity in a child support action on the appellant's behalf adequately served the State's interest in "accurate and efficient disposition of property at death ...." Id at 772.

In Lalli, 439 U.S. at 267 (plurality opinion), this Court upheld a provision in a New York intestacy statute requiring that paternity be established in a judicial proceeding during the father's lifetime. The Court concuded that the statutory requirement was designed primarily "to provide for the just and orderly disposition of property at death." Id at 268

(plurality opinion). The Court held that the inherent difficulty of proving paternity jusified the obstacles placed in the path of illegitimate children seeking to inherit from their father's estate. Id at 268-75 (plurality opinion). Justice Powell, writing for the plurality, distinguished Trimble by noting that the Illinois statute there considered required both paternal acknowledgement and parental intermarriage. Id at 266-67 (plurality opinion). The absolute insistence upon subsequent intermarriage, Justice Powell wrote, excluded from inheritance an unnecessarily large class of illegitimate children and evidenced an impermissible goal of promoting legitimate families by penalizing the offspring of illicit relationships. Id.

Justice Powell announced the judgment

of the Court in Lalli; his opinion was joined only by Chief Justice Burger and Justice Stewart. Id at 261. Justice Rehnquist concurred in the judgment. Id at 276. Justice Blackmun, writing separately, also concurred in the judgment. Id. And, Justice Brennan, joined by Justice White, Justice Marshall and Justice Stevens, dissented. Id at 277. The harsh result reached in the decision below demonstrates that the issue narrowly decided by a divided Court is ripe for reconsideration.

As Justice Brennan predicted in his dissent, the Lalli ruling allows the exclusion from inheriting by intestacy from their father a substantial class of illegitimate children -- children voluntarily acknowledged and supported by their fathers. See Lalli, 439 U.S. at 278 (Brennan, J., dissenting). The petitioner

offered substantial evidence of voluntary acknowledgement and support by Kyrl H. Jeffries, the decedent and her undisputed biological father. As Justice O'Connor pointed out in Mills v. Habluetzel, 456 U.S. 91, 105-06 (1982) (O'Connor, J., concurring), under such circumstances it is extremely unlikely that the child or his/her guardian will seek an adjudication of paternity or pressure his/her father to formally acknowledge his child. See also Lalli, 439 U.S. at 278 (Brennan, J., dissenting) (making similar argument).

States clearly have a valid interest in reducing the possiblity of fraud associated with the difficulty of proving paternity. E.g., Lalli, 439 U.S. at 271. This interest, however, is easily exaggerated. In Lalli, 439 U.S. at 271-72, Justice Powell noted that requiring adjud-

ication of paternity during the father's lifetime promoted accurate resolution of paternity issues and allowed the putative father to defend his reputation. Although resolving paternity during the father's life allows the putative father an opportunity to rebut charges of paternity, it is difficult to discern how a dead man's interest in guarding his reputation justifies sweeping disqualifications preventing illegitimate children from inheriting by intestacy from their fathers. Moreover, under the circumstances of this case, in which the decedent has openly acknowledged the petitioner as his child, the father's interest in his reputation is not implicated. In addition, the putative father's presence is not indispensable to an adjudication of paternity. See Handley v.Schweiker, 697 F.2d 999, 1005 (11th Cir.

1983).

More important, the State's interest in preventing fraud is undercut by the State's competing interest in providing a reasonable opportunity for advancement of genuine claims of entitlement, in ensuring that illegitimate children inherit from their biological fathers to the extent practible. See Pickett v. Brown, 462 U.S. 1, 10 (1983). In addition, the difficulties of proof associated with paternity disadvantage both sides of the dispute. Handley, 697 F.2d at 1005. Placing the burden of proof upon illegitimate children seeking to inherit by intestacy from their fathers shifts the balance of uncertainty against illegitimate children pressing false claims; elevating the standard of proof would tilt the scale even further. See Lalli, 439 U.S. at 278-79 (Brennan,

J., dissenting). In any event, the State's interests in guarding against fraud, can not be pursued at the expense of an illegitimate child's right to equal protection of the laws, at least under circumstances in which the possibility of fraud is not present. See Lalli. 439 U.S. at 279 (Brennan, J., dissenting). The respondents have admitted that petitioner is the daughter of the decedent-- fraud is not an issue.

States also have valid interests in promoting the orderly distribution of estates, including ensuring finality to titles passed through intestacy statutes. E.g, Reed v. Campbell, ___ U.S. at __, 106 S.Ct. 2234, 2237 (1986). As Justice Brennan pointed out in his dissent to Lalli, 439 U.S. at 279, however, these interests are easily met by providing for

publication notice and short limitation periods. Moreover, the State of North Carolina's interest in orderly distribution does not require that N.C. Gen. Stat. 29-19(b) be applied to bar the petitioner from inheriting by intestacy from her father. See id. The adminstratrix of the decedent's estate knew of petitioner's claim to the estate. The decedent had openly acknowledged the petitioner as his daughter. Both the petitioner's birth certificate and the decedent's death cetificate indicated that the petitioner was the decedent's daughter. The petitioner's claims were timely asserted. The State of North Carolina's interest in orderly and efficient distribution of the decedent's estate would not be threatened by allowing the petitioner, or others similarly situated, to inherit under such circum-

stances.

The critical flaw in intestacy statutes unduly burdening illegitimate children is that such statutes penalize children because of circumstances largely beyond their control. Weber, 406 U.S. at 175. In Lalli, 439 U.S. at 271, the Court upheld a New York statute by relying substantially on the various means by which a father could ensure that the state of New York would not discriminate against his illegitimate children in the distribution of his intestate estate. Arguably, what the father could have done is immaterial; see Trimble, 430 U.S. at 773-74; intestacy statutes operate when the decedent has failed to act. If intestacy statutes deny equal protection because they impose legal burdens without regard to fault, see Weber, 406 U.S. at 175; Reed, ___ U.S. at

___, 106 S.Ct. at 2237 n.5, consideration of whether available alternatives sufficiently narrow the class of children penalized should focus on the steps that illegitimate children may take to overcome the second-class citizenship imposed by operation of law. See Trimble, 430 U.S. at 773-74; White v. Randolph, 59 Ohio St. 2d 6, 12-13, 391 N.E.2d 333, 336 (1979) (Palmer, J., dissenting). As the Rhode Island Supreme Court stated, "although there may be illegitimate parents, there is, in justice, no such person as an illegitimate child." In Re Estate of Cherkas, ___ R.I. __, 506 A.2d 1029, 1031 (1986).

The North Carolina intestacy statute precluding proof of paternity after the death of the putative father denies equal protection of the laws because it "com-

pletely prohibits an illegitimate child from inheriting by intestacy from the father, regardless of the quantum or nature of the proof of the relationship." In Re Estate of Cherkas, ___ R.I. __, 506 A.2d 1029, 1030 (1986). The statute's broad sweep is not justified by the State's legitimate interests, particularly when the State can easily meet its objectives through other means.

As Justice Brennan wrote in dissent to Lalli, 439 U.S. at 278-79, a standard of proof requiring clear and convincing evidence of paternity if paternity is to be established after the father's death, coupled with publication notice and a short limitations period, adequately serves the State's interest in just and orderly distribution of estates-- without undue hardship for illegitimate children.

The Uniform Probate Code of 1971 suggested that states allow illegitimate children to inherit by intestacy from their fathers if paternity can be established by clear and convincing evidence after death. Unif. Prob. Code, section 2-109(2)(1971. The Uniform Parentage Act of 1973 provided for proof of paternity after the putative father had died. See Unif. Parentage Act, sections 6 & 7 (1973). Many states have adopted similar provisions. E.g., Mont. Code Ann. 72-2-213 (1985); N.Y. Est. Powers & Trusts 4-1.2(a)(c)(1981); In Re Estate of Cherkas, ___ R.I. at ___, 506 A.2d at 1031; In Re Succession of Sanders, 485 So.2d 126, 126 (La. Ct. App. 1986); Miller v. Watson, 467 So.2d 672, 674-75 (Miss. 1985); Allen v. Harvey, 568 S.W.2d 829, 833 (Tenn. 1978).

Failure to provide some means of es-

tablishing paternity after the father's death creates substantial hardship not justified by legitimate state interests. The primary class of illegitimate children unduly handicapped is composed of those children voluntarily acknowledged and supported by their father. See Lalli, 439 U.S. at 278 (Brennan, J., dissenting). Two situations, however, highlight the failure of States to justify such exclusion: (1) proof of paternity during the father's life is impossible; (2) proof of paternity is not necessary to protect States' interests.

In Handley v. Schweiker, 697 F.2d at 1004-05, the United States Court of Appeals for the Eleventh Circuit held that in circumstances in which it is impossible to prove paternity, during the father's lifetime, equal protection principles will

not tolerate flat prohibitions against proving paternity after the father's death. The Eleventh Circuit's decision in Handley involved a claim for death benefits on behalf of a child whose father died before the child was born. Id at 1001. In Handley, 697 F.2d at 1004-05, the Court of Appeals held that an Alabama statute governing intestate succession by illegitimate children, as applied to claims for death benefits under the Social Security Act, denied equal protection of the laws. The Eleventh Circuit strained to distinguish Lalli from Trimble and determined that the force of Lalli had been undercut by this Court's decision in Mills v. Habluetzel, 456 U.S. 91. The Indiana Court of Appeals has held that a provision requiring adjudication of paternity during the father's life can not be applied to

circumstances in which a paternity suit had been initiated, but not completed during the father's life. In the Matter of Hendren, __ Ind. App. __, 459 N.E.2d 437, 442 (1984).

This petition concerns circumstances under which requiring proof of paternity during the father's life is not necessary to protect the State's objectives. The respondents conceded that petitioner is the decedent's daughter. The decedent was named as the petitioner's father on petitioner's birth certificate. The decedent treated the petitioner treated the petitioner as his daughter and publicly acknowledged her as such. The decedent gave petitioner money and gifts while he was alive and took steps to provide for her after his death. The decedent signed an insurance form, acknowledged by two disin-

terested parties, naming the petitioner as his daughter. The respondents were fully aware of the petitioner's claim to the decedent's estate. The possiblity of fraud is simply not presented; nor would the State's interest in the orderly distribution of estates be threatened by allowing illegitimate children who can establish paternity by such clear and convincing evidence to inherit from their father's estate.

Not only is this Court's decision in Lalli inconsistent with fundamental principles of equal protection, it creates an unacceptable standard for assessing whether a particular requirement hindering illegitimate children from participating in their fathers' estates denies equal protection of the laws.

The murky distinction between the

Illinois statute invalidated in Trimble and the New York statute upheld in Lalli establishes a dichotomy of constitutional and unconstitutional statutes, not a functional standard. See Lalli, 439 U.S. at 276 (Blackmun, J., concurring in judgment). Rather than focusing courts' analysis on the extent of discrimination against illegitimate children -- in light of the strength of the relationship between a questioned statute and the legitimate state objectives involved -- the present test leads courts to determine whether an intestacy statute challenged on equal protection grounds fits better the mold cast by the Illinois statute invalidated in Trimble or by the New York statute approved in Lalli. Id at 277 (Blackmun, J., concurring in judgment).

Such a standard encourages super-

ficial analysis incapable of adequately protecting the interests expressed in the Equal Protection Clause. E.g, Mitchell v. Freuler, 297 N.C. at 215-16, 254 S.E.2d at 767-68; see also Note, Constitutional Law -- Judicial Impairment of the Illegitimate's Paternal Inheritance Rights in North Carolina-- Mitchell v. Freuler, 16 Wake Forest L. Rev. 205, 213-18 (1980) (in-depth examination of Mitchell decision characterizing North Carolina Supreme Court's analysis as "perfunctory"). And, as Justice Blackmun predicted, each state's statutes are "of questionable validity until this Court passes on them, one by one, as being on the Trimble side of the line or the Labine-Lalli side." Lalli, 439 U.S. at 277 (Blackmun, J., concurring in judgment). The resulting uncertainty is, perhaps, best illustrated by

decisions in which a majority has found either Lalli or Trimble controlling, but a dissent has found the other case decisive. See In the Matter of the Estate of Hendren, ___ Ind. App. __, 459 N.E.2d 437; White v. Randolph, 59 Ohio St 2d 6, 391 N.E.2d 333 (1979); Beck v. Jofffiff, 220 Ohio App. 3d 84, 489 N.E.2d 825 (1984).

The plurality opinion in Lalli did not clearly indicate the extent to which the Court's holding depended on the liberal interpretation given by the New York courts to the New York statute upheld in Lalli. See Lalli, 439 U.S. at 273-74. In Lalli, the plurality opinion placed special emphasis on the efforts of the New York courts to soften the harsh results of York's intestacy statutes, by applying them in light of the statute's remedial purpose. Id. Arguably this language ele-

vates questions of statutory interpretation to constitutional issues of fundamental importance. See Note, supra p. 37, at 209-11 (analyzing state court decisions involving questions of whether the Equal Protection Clause requires that statutes controlling intestate succession by illegitimate children be treated as remedial measures and interpreted liberally, or, conversely, allows such statutes to be construed strictly as in derogation of common law); see also In the Matter of the Estate of Hendren, __ Ind. App. at __, 459 N.E.2d at 442-43 (Hoffman, J., dissenting) (criticizing majority for implicitly holding that liberal interpretation of Indiana intestacy statute is required by the Equal Protection Clause).

As the decision below demonstrates, the North Carolina courts have evidenced

little inclination to mitigate the harsh results of N.C. Gen. Stat. 29-19(b)(2) by interpreting it in light of its remedial purpose. (p. 5A, infra); see also In the Matter of the Estate of Stern, 66 N.C. App. 507, 311 S.E.2d 909, (refusing to interprete the statute liberally despite particularly compelling facts) aff'd per curiam, 312 N.C. 486, 322 S.E.2d 771 (1984) appeal dismissed ___ U.S. __, 105 S.Ct. 2010 (1985). As the harsh result reached in the decision below illustrates, strict application of N.C. Gen. Stat. 29-19(b)(2), without reference to the remedial purpose of the statute or to the objectives requiring illegitimate children to prove paternity, accentuates discrimination against illegitimate children without substantial justification.

CONCLUSION

For the reasons set forth herein, petitioner respectfully requests the Court to issue its writ of certiorari to the North Carolina Court of Appeals to review the judgment of that court in petitioner's case.

This the 3rd day of June, 1987.

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*Representation of the petitioner in this proceeding is provided by the North Carolina Civil Liberties Union Legal Foundation, Inc., a state affiliate of the American Civil Liberties Union.

APPENDIX

NO. 8618SC254
NORTH CAROLINA COURT OF APPEALS
Filed: 7 October 1986

ZELMA E. HAYES

v. Guilford County
N. 85CVS4240

JOYCE M. DIXON
Administratrix of the Estate
of Kyrl Houston Jeffries,
NOVELLA J. MARTIN, SAMUEL
JEFFRIES and JOYCE M. DIXON,
Administratrix of the Estate of
Myrtle Jeffries

Appeal by plaintiff from Ross, Judge. Judgment entered 1 October 1985 in Superior Court, Guilford County. Heard in the Court of Appeals 15 September 1986.

Kyrl Houston Jeffries died intestate in Guilford County, North Carolina, on 5 October 1984. Plaintiff claims and defendants admit that plaintiff is the illegitimate daughter of decedent. Plaintiff commenced this action to establish her right to inherit decedent's estate.

Plaintiff's pleadings and affidavits tended to show the following facts. Plaintiff's birth certificate indicates decedent as her father. Decedent designated plaintiff, as his daughter, as the beneficiary of proceedings from a federal employees group life insurance policy and had purchased savings bonds totalling approximately $6,750.00 made payable to plaintiff.

Defendants, who are decedent's collateral heirs, admit in their answer that plaintiff is the illegitimate daughter of decedent. However, defendants moved for summary judgment on the ground that no genuine issue as to any material fact existed since there had been no compliance with G.S. 29-19 governing succession by and through illegitimate children. The trial court granted defendant's motion for

summary judgment. From the order granting summary judgment, plaintiff appeals.

Levitt and Gordon, by Dean L. Gordon; and Faison, Brown, Fletcher, Shearon & Brough, by Reginald Gillespie Jr., for the plaintiff appellant.

Street, Welborn & Stokes, by Marquis D. Street, for defendant appellees.

ARNOLD, Judge.

Plaintiff contends that it was error for the trial court to apply G.S. 29:19(b) in this matter where the biological father-daughter relationship between defendant and plaintiff is not a genuine issue. We do not agree.

G.S. 29-19(b) in pertinent part states:

> For purposes of intestate succession, an illegitimate child shall be entitled to take by, through and from:
>
> (1) Any person who has been finally adjudged to be the father of such child pursuant to

> the provisions of G.S. 49-1 through 49-9 or the provisions of G.S. 49-14 through 49-16;
>
> (2) Any person who has acknowledged himself during his own lifetime and the child's lifetime to be the father of such child in a written instrument executed or acknowl-eged before a certifying officer named in G.S. 52-10(b) and filed during his own lifetime in the office of the clerk of superior court of the county where either he or the child resides.

Absent the statute, an illegitimate child has no right to inherit from his or her putative father. See Herndon v. Robinson, 57 N.C. App. 318, 291 S.W.2d 305, appeal dismissed and cert denied, 306 N.C. 557, 294 S.E.2d 223 (1982). In the present case, there has been no compliance with G.S. 29-19. Therefore plaintiff has no right to inherit from decedent.

The statute mandates what at times

may create a harsh result. It is not, however, for the courts but rather for the legislature to effect any change. We find no error in the application of G.S. 29-19 in this case.

Plaintiff also argues that the decedent's actions during his lifetime constituted constructive compliance with G.S. 29-19. We disagree.

Although we are aware of cases commenting upon constructive compliance, the doctrine has not been specifically recognized in North Carolina. However, even if the doctrine were to exist, decedent's acts in this case would not rise to the level of constructive compliance with G.S. 29-19.

Plaintiff further contends "that the plaintiff-appellant may be the 'legitimated child' under the laws of the state of

New York within the meaning of G.S.29-18 and therefore entitled to inherit from decedent." We disagree.

G.S. 29-18 states:

> A child born an illegitimate who shall have been legitimated in accordance with G.S. 49-10 or 49-12 or in accordance with the applicable law of any other jurisdiction, and the heirs of such child, are entitled by succession to property by, through and from his father and mother and their heirs the same as if born in lawful wedlock; and if he dies intestate, his property shall descend and be distributed as if he had been born in lawful wedlock.

We find that plaintiff has made no showing that she has been legitimated in accordance with the applicable law of New York.

Finally, we find plaintiff's argument that it was a denial of equal protection to apply G.S. 29-19 in this case to be without merit.

Affirmed.

Chief Judge HEDRICK and Judge ORR concur.

Zelma E. HAYES

v.

Joyce M. DIXON, et al

N. 666P86
Supreme Court of North Carolina
Feb. 3, 1987

Prior report: 83 N.C. App. 52, 348 S.E.2d 609

Faison, Brown, Fletcher & Brough, Chapel Hill, for the plaintiff.

Street, Welborn & Stokes, Greensboro, for the defendants.

ORDER

Upon consideration of the notice of appeal from the North Carolina Court of Appeals, filed by Plaintiff in this matter pursuant to G.S. 7A-30, the following order was entered and is hereby certified to the North Carolina Court of Appeals: the appeal is

"Dismissed by order of the Court in

conference, this the 3rd day of February 1987."

Upon consideration of the petition filed by Plaintiff in this matter for discretionary review of the decision of the North Carolina Court of Appeals pursuant to G.S. 7A-31, the following order was entered and is hereby certified to the North Carolina Court of Appeals:

"Denied by order of the Court in conference, this the 3rd day of February 1987."

Therefore, it is considered and adjudged further that Plaintiff do pay the sum of Nine and no/100 dollars ($9.00) and that execution issue therefor.